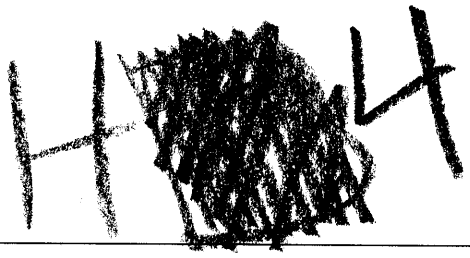

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

PUBLIC COPY

[redacted]

FILE [redacted] Office: Vermont Service Center Date: JUL 03 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is before the AAO on a second motion to reopen. The motion will be dismissed, and the order dismissing the appeal will be reaffirmed.

The applicant is a native and citizen of Guinea who was admitted to the United States in 1987 as a nonimmigrant visitor with authorization to remain for six months. The applicant failed to depart by the authorized date or to apply for or to obtain an extension of temporary stay. On November 21, 1990, she divorced her husband, [redacted] She married [redacted] on July 30, 1992. On March 31, 1993, the Bureau denied a Petition for Alien Relative filed on behalf of the applicant on the grounds that the parties entered into a fraudulent marriage. The Board of Immigration Appeals (BIA) dismissed an appeal of that decision on March 18, 1994.

An Order to Show Cause was served on the applicant on June 21, 1994. On November 21, 1995, the applicant was ordered deported to Guinea by an immigration judge. The BIA dismissed an appeal of that decision on April 4, 1997. Therefore, the applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii).

The applicant divorced [redacted] on July 13, 2000, and married [redacted] a naturalized U.S. citizen, on October 10, 2000, while in deportation proceedings and is the beneficiary of a Petition for Alien Relative approved on October 20, 2001. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

The director considered the fact that the initial visa petition was denied based on a finding that [redacted] failed to establish that their marriage had not been entered into for the purpose of obtaining an immigration benefit. The director considered that element an unfavorable factor in the decision. The director determined that the unfavorable factors outweighed the favorable ones and denied the application accordingly.

The AAO affirmed that decision on appeal on June 17, 2002, and concluded that the applicant had failed to establish that she warranted a favorable exercise of discretion. The AAO further concluded that applicant's equity (marriage) gained while being unlawfully present in the United States (and entered into while in deportation proceedings) could be given only minimal weight.

Based on the fact that the BIA determined that the applicant's prior marriage was fraudulent, the AAO stated that the Bureau must deny any subsequent visa petitions for immigrant classification filed on behalf of such alien and cited section 204(c) of the Act, 8 U.S.C § 1182(c). *Matter of Kahy*, 19 I&N Dec. 803 (BIA 1993).

On first motion, counsel stated that the Bureau failed to consider the fact that [redacted] was in an intoxicated state and could not appear for an interview.

The AAO stated that decisions of the Board and the immigration judge are binding and used the determination regarding the applicant's marriage to [redacted] as a negative factor.

On second motion, counsel states that the Bureau incorrectly recites the proposition that prior decisions are binding and it must make its own decision and weigh all the factors as presented. Counsel reasserts his statement that the applicant entered into an abusive relationship and would have been prima facie eligible to file her own visa petition.

Pursuant to 8 C.F.R. § 3.1(d)(6), decisions of the Board shall be final except in those cases reviewed by the Attorney General. 8 C.F.R. § 3.2(g) provides that, except as they may be modified or overruled by the Board or the Attorney General, decisions of the Board shall be binding on all officers and employees of the Service [now Bureau] or immigration judges. The Board determined that Freddie failed to sustain the burden of establishing that his marriage to the applicant was valid for immigration purposes. The AAO will continue to consider that finding an unfavorable factor until the Board's decision is reversed. Further, even if the applicant's marriage to Freddie Holloway were not considered an unfavorable factor, the other unfavorable factors would still outweigh the favorable ones in this matter.

Pursuant to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence.

Pursuant to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for consideration; and be supported by any pertinent precedent decisions.

Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

The issues in this matter were thoroughly discussed by the director and the AAO in their prior decisions. Since no new issues have been presented for consideration, the motion will be dismissed.

ORDER: The motion is dismissed. The order of June 17, 2002, dismissing the appeal is reaffirmed.